IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 20143 of 2003

Between:

The Depot Manager, APSRTC, Nandyal
Kurnool Dist.

..... PETITIONER

AND

1 The Industrial Tribunal Cum Labour Court, Rep.by its pred.officer
Ananthapur
2 Sri Dudekula Hussain E.102233 s/o. D.Hussain,,
3rd Street, Sanjeevanagar, Nandyal, Kurnool Dist.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records pertaining to ID NO: 72/2000 on the file of the Labour Court, Ananthapur and quash the award
Dt.24-3-2003 by issuing appropriate writ order or direction more particularly one in the nature of writ of certiorari.

Counsel for the Petitioner: MR.P.VINAYAKA SWAMY

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: MR. G. VIDYASAGAR

The Court made the following:

ORDER:

Challenging the award dated 24-03-2003 passed in I.D.No.72 of 2000 on the file of the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur, (for short 'the Tribunal') the present writ petition is filed.

The second respondent herein was arrested on 10-07-1994 in connection with Crime No.145 of 1994 for the offence under Section 34(A) of the A.P. Excise Act. Therefore, a charge sheet has been issued against him. Not satisfied with the explanation offered by the second respondent, a regular departmental enquiry was conducted against him. As the enquiry officer held that the charges levelled against the second respondent have been proved, the disciplinary authority issued an order of removal of the second respondent from service, vide its order dated 18-05-1995. Challenging the same the second respondent raised an industrial dispute before the first respondent-Tribunal in I.D. No.72 of 2000. The Tribunal came to the conclusion that charges 2 and 3 have been proved and as they are disproportionate to prove the misconduct, it ordered to reinstate him with 50% backwages and also imposed punishment for deferment of increments for a period of two years.

The charges levelled against the second respondent read as follows:

" 1) For having involved in selling of illicit arrack near your house bearing No.3/540, Sanjeevanagar, Nandyal which is against to A.P. Excise Act on 10-07-1994 for which you were arrested at 19-00 hrs., on 10-07-1994 and registered a case against you vide Crime No.145/94 U/s.34(A) of A.P. Excise Act by police authorities of Nandyal which constitutes a misconduct in terms of Clause (xv) of Reg.28 of APSRTC Employees (conduct) Reg. 1963.

2) For having concealed the fact of arrest in connection with selling of illicit arrack by you on 10-07-1994, which constitutes misconduct in terms of Reg.26 APSRTC Employees (conduct) Reg.1963.

3) For having absented to your charted duty 12-30 hrs., Kotakonda on 11-07-1994 resulting which much inconvenience caused to the traffic officials in arranging another driver to perform the service which constitutes misconduct in terms of clause (xxvii) of Reg.28 of APSRTC Employees (conduct) Reg. 1963".

The finding of the Tribunal insofar as charge No.1 is concerned, there was no direct witness to show that the second respondent was selling illicit liquor. Merely because the police registered a case, that itself will not prove the allegation against any person unless a competent Court finds the person guilty of the charge. Therefore, charge No.1 levelled against him has not been proved.

Insofar as charges 2 and 3 are concerned, the second respondent was arrested by the police on 10-07-1994 and on appreciation of the record; the Tribunal gave a finding that charges 2 and 3 are proved. The categorical finding of the Tribunal is that the finding of the enquiry officer on charges
2 and 3 cannot be said to be perverse. Therefore, the Tribunal held that charges 2 and 3 have been proved.

Findings of the Tribunal cannot be said to be perverse or contrary to the evidence on record. The enquiry has been held in accordance with law and proper opportunity was given to the second respondent herein to participate in the enquiry. There was no violation of principles of natural justice. It is not the case of the second

respondent that the enquiry was not conducted in accordance with regulations. Normally, the second respondent is entitled for backwages when the order of the disciplinary authority is found to be illegal or not in accordance with law. It is a case where the enquiry is found to be conducted properly and charges 2 and 3 have been proved beyond preponderance of probabilities. Therefore, the question of awarding backwages may not arise, unless some reasons are given in the impugned award. No reason is assigned in the impugned award insofar as granting 50% backwages is concerned. Therefore considering the nature of charges, the Tribunal felt that the proved charges are disproportionate to the sentence imposed and also disproportionate to the proved misconduct and thus the Tribunal has taken a lenient view in reinstating the second respondent
into service. That observation need not be interfered with in view of the fact that the only mistake committed by him is not informing the concerned authorities soon after his arrest in connection with Crime No.145 of 1994 under Section 34(A) of the Excise Act.

Learned counsel for the petitioner relied upon a decision in ***SHAMBHU NATH GOYAL v. BANK OF BARODA AND OTHERS*** wherein it is held:

> "There is no material on record to show that the workman was gainfully employed anywhere. The management has not furnished any particulars in this regard even before this Court after such a long lapse of time. The workman could have been asked to furnish the necessary information at the earliest stage. The management has not resorted to that course. The workman was not expected to prove the negative".

While observing the same, the Apex Court awarded full backwages to the workman. It is a case where the dismissal was held to be not justified and the same was set aside by the Tribunal and the workman was ordered to be reinstated with full backwages. Here, in this case, the dismissal order passed by the disciplinary authority insofar as charges 2 and 3 are concerned, it has been upheld by the Tribunal. Therefore, the above decision is not applicable to the present case.

In the result, the writ petition is partly allowed confirming the award of the Tribunal except setting aside 50% backwages from 06-12-1997 to 30-11-1998 and from 01-05-2000 till the date of reinstatement.

With the above modification, the writ petition is partly allowed. No order as to costs.

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K.C. BHANU, J

Dated: 21-06-2005

LSK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice

On this Tuesday, the Twenty First Day of June, Two Thousand and Five.

To

1 The Presiding Officer, Industrial Tribunal Cum Labour Court, Ananthapur

2 Two C.Cs. to the G.P. for Labour, High Court buildings, Hyderaba. (OUT).
3 Two C.D. copies.